IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9846 of 2003

For Approval and Signature:

Hon'ble HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SATISHSINGH JUVAN KAILASSINGH JUVAN ODE

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 9846 of 2003

MS BANNA S DUTTA for Petitioner No. 1

MS MITA PANCHAL Ld. AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 26/08/2003

ORAL JUDGEMENT

By way of this Special Civil Application the petitioner-detenu under the Gujarat Prevention of Anti

Social Activities Act, (Hereinafter referred to as "the PASA Act" for short) has assailed the detention order passed by the Police Commissioner, city of Baroda on 23.9.2002 in the exercise of powers conferred upon him under sec. 3(1) of the PASA Act. Accordingly, as mentioned in the Annexure-C, page 28 the grounds for detention, in all 7 offences against the petitioner-detenu came to be registered for the charges under sec. 454, 457, 380, 511 and in some cases to read with section 114 of IPC. The petitioner detenu was declared as "dangerous person" and stated to have been engaged in anti social activities for which the authority verified the statements of two witnesses stating the incident occurred on 16.6.2002 and 12.7.2002 whereby the petitioner-detenu after taking quarrel, with knife in hand ran after the group of persons for causing injuries to them on account of which the detenu put the law and order in jeopardize. ON the same day, the petitioner-detenu came to be arrested and sent to Prison at Junagadh.

Ld. advocate Ms. Banna Datta for the petitioner and ld. AGP Ms. Panchal for the respondents were heard.

Though the order impugned for detention of the petitioner under the PASA Act came to be challenged on various grounds but going through the record, it appears that the ground that whether the order impugned is passed with proper application of mind, is required to be considers.

Now it is clear from the grounds served upon the detenu, vide para-7 that while order of detention came to be served upon the petitioner-detenu, he was under judicial custody at Central Jail, Baroda in almost six cases registered against him, as aforesaid. But the authority concerned even then came to the conclusion and subjective satisfaction that petitioner -detenu was likely to move the court by way of filing bail application and after furnishing proper bail, the petitioner was likely to continue his anti social activities. The order in question is required to be examined on this aspect and, therefore, the other grounds urged are not dealt with.

In the matter of Amritlal and other vs. Union Government through Secretary, Ministry of Finance and others as reported in AIR 2000 SC 3675. The Apex Court laid down that it cannot be disputed that detention while the detenu is under custody is though permissible but the authority passing the order impugned must apply its mind

to the vital and important aspects and facts before reaching the subjective satisfaction as required under the law. The Apex Court made it amply clear that there is a difference between "likelihood of detenu moving an application for bail" and "likelihood to be released on bail". For coming to subjective satisfaction as to "likelihood to be released on bail" there must be some cogent material before the concerned authority which passed the order of detention. Going through the record of the case on hand, it is clear that the authority in this case i.e. Police Commissioner, City of Baroda did not rely upon any such cogent material to reach at definite conclusion and subjective satisfaction that "detenu was likely to be released on bail" and, therefore, the order of detention is suffering from infirmity of non application of mind. In similar circumstances, this court in the matter of Rajendra Gulabchand Sangani vs. Commissioner of Police in Special Civil Application No. 12225 of 2002 decided on 12.5.2003 took the same view.

In the above view of the matter, this petition stands allowed accordingly. The impugned order of detention dated 23.9.2002 is quashed and set aside. The respondents are directed to release the petitioner forthwith, if he is not required to be detained in Jail for any other purpose. Rule is made absolute with no order as to costs. DS Permitted.

(J.R. VORA, J.)

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